

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion is respectfully requested.

Claims 1-2, 4-7, 9-12, 14-17 and 19-20 are currently pending in the application; Claims 1, 4, 6, 9, 11, 14, 16 and 19 are amended; and Claims 3, 8, 13 and 18 are canceled by the present amendment. Claims 1, 6, 11 and 16 are amended only to incorporate the subject matter of Claims 3, 9, 13 and 18, respectively. Thus, no new matter is presented.

In the outstanding Official Action, Claims 1-20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Sharp et al. (U.S. Patent No. 6,263,317, hereinafter “Sharp”) in view of Salvo et al. (U.S. Patent No. 6,341,271, hereinafter “Salvo”) and Official Notice.

Applicants respectfully submit that amended independent Claims 1, 6, 11 and 16 state novel features clearly not taught or rendered obvious by the applied references.

Independent Claim 1 relates to a distribution management device which receives first order information and second order information of merchandise over a network. The first order information is formed based on a purchase request received over a first sales channel using the network and second order information is formed based on a second purchase request received over a sales channel which is a point-of-sale location not using the network. The distribution management device then controls a stock of merchandise to be distributed to the first and second sales channels based on the received first and second order information. An actual sales condition of the merchandise is retrieved in the first and second sales channels based on the received order information, and supplied stock control information instructs a supplier of the merchandise to supply the merchandise based on the actual sales condition.

Independent Claim 1 further recite that the supply instruction means instructs the supplier to supply a new product so that said new product would be controlled as the stock

corresponding to the sales debut of said new product and ***the new product is to be stored in said second sales channel.*** Thus, the new product is ***stored*** in the ***second sales channel which is a point-of-sale location that does not use the network,*** and therefore the merchant is able to control stock distribution to this point of sale location (second channel) and fulfill orders taken via the network on the first channel from this location.

Turning to the applied references, Sharp describes a web sales channel conflict resolution system. Specifically, Sharp describes a web-based system in which customers can place orders for brand name products and these orders are allocated to manufacturers, distributors and retailers according to distribution channel protocols defined by the manufacturers. Sharp's system is configured to ensure that the sales of brand name goods and services via the Internet does not violate existing distribution agreements between the manufacturers and the respective distributors and retailers.¹

Salvo describes an inventory management system and a method which automatically monitors inventory amounts, provides information concerning inventory, and decides if an order for replacement inventory should be placed.² The system includes a storage for inventory, an indicator for monitoring and reporting the level of current inventory, and a controller for receiving information from different inventory suppliers and for integrating such information with information on current inventory amounts and estimated future use. Salvo's system is specifically directed to detecting the amount of inventory remaining in receptacles at a manufacturing site using a variety of sensors.³

The requirements for a *prima facie* case of obviousness are (1) there must be some suggestion or motivation in the references themselves to modify the reference or to combine the reference teachings, (2) there must be a reasonable expectation of success, and (3) the

¹ Sharp at abstract.

² Id.

³ Id.

prior art reference must teach or suggest all the claim limitations. It is respectfully submitted that the outstanding Official Action fails to make a *prima facie* case of obviousness because Sharp and/or Salvo neither alone nor in combination teach or suggest all the elements recited in independent Claims 1, 6, 11 and 16.

As noted above, Claim 1 recites, *inter alia*, a distribution management device, comprising:

said supply instruction means instructs said supplier to supply a new product so that said new product would be controlled as the stock corresponding to the sales debut of said new product and ***said new product is to be stored in said second sales channel.***

Amended independent Claims 6, 11 and 16 recite substantially similar features but are directed to alternative statutory classes. Accordingly, the arguments presented below apply to each of Claims 1, 6, 11 and 16.

The outstanding Official Action states that “the Examiner takes Official Notice that it was well known in the art of commerce to make a purchase request via a second sales channel which is a point of sales location”.⁴ Thus, the Official Action acknowledges that neither Sharp nor Salvo teach the use of a second sales channel, which is a point of sale location.

With regard to this noted deficiency in light of the rejection under 35 U.S.C. § 103, it appears that the Official Action is taking official notice without providing a citation in support of its assertion.

If official notice is being taken, Applicants respectfully submit that official notice alone is not permissible as grounds for rejection in the outstanding Official Action. As stated in the MPEP at § 2144.03(A):

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known

⁴ Outstanding Official Action, p. 3.

are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

With regard to the above, Applicants respectfully submit that the features advantageously recited in Claims 1, 6, 11 and 16 are not “capable of instant and unquestionable demonstration as being well-known.” Should Official Notice be maintained as a grounds for rejection in this case, Applicants request a “citation to some reference work recognized as standard in the pertinent art”, as required above.

Nonetheless, the Official Action asserts that the second sales channel may be “for example: mail, face-to-face, phone or fax communication”.⁵ As noted above, Claim 1 recites that a new product is debuted and *said new product is to be stored in said second sales channel*. Thus, a purchase request received via the second sales channel can be fulfilled instantaneously via the second sales channel, because the *new product is stored* in this channel as well as the distribution facility (e.g., to fulfill orders taken over the network, etc.). However, neither reference teaches or suggests *storing new product in said second sales channel, which is a point-of-sale location that does not use the network*.

In contrast, Sharp simply describes a process of routing an order which has been submitted over the Internet to an appropriate manufacturer, distributor or retailer to be filled and shipped. Accordingly, the order data can be received over a network connection, and the merchandise is packaged and shipped from one of a plurality of locations to the user. At no point does Sharp teach or suggest *storing* new product in said second sales channel, which is a point-of-sale location that does not use the network, as recited in amended Claim 1. Instead, Sharp describes a process of individually fulfilling orders received over the network, not *storing* a product in one of the sales channels.

⁵ Id.

As discussed above, Salvo describes that inventory at a plurality of receptacles is monitored so that a determination is made when the inventory at a specific receptacle falls below a predefined level, at which time additional material is ordered from a manufacturer.⁶

However, Salvo fails to teach or suggest a means for controlling a stock of merchandise to be distributed to a plurality of *sales channels, one being a point-of-sale location, based on order information*, as recited in amended Claim 1. Instead, Salvo describes only that an amount of inventory at a centralized location is tracked and that the inventory stored at this location may be replenished by ordering additional inventory from a manufacturer⁷. Thus, Salvo is concerned only with the stock of merchandise stored at a central location and fails to teach or suggest a means for controlling a stock of merchandise to be distributed to a plurality of *sales channels*, as recited in amended Claim 1. Specifically, the receptacles of Salvo clearly do not correspond to a sales channel, as Salvo fails to teach or suggest that the receptacles as used as such.

Accordingly, Applicants respectfully request the rejection of Claims 1, 6, 11 and 16 under 35 U.S.C. § 103(a) be withdrawn. As Claims 2, 4, 5, 7, 9, 10, 12, 14, 15, and 17, 19 and 20 depend, respectively, from the above-noted independent claims. Applicants respectfully submit that these claims also patentably define over Salvo and Sharp.

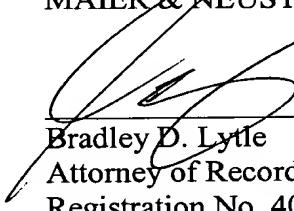
⁶ Id., Abstract.

⁷ Id., col. 7, line 38-col. 8, line 4.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 1-2, 4-7, 9-12, 14-17 and 19-20 is patentably distinguishing over the applied references. The present application is therefore believed to be in condition for formal allowance and an early and favorable action is therefore respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073
Andrew T. Harry
Registration No. 56,959

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

BDL/ATH/KKN

I:\ATTY\ATH\PROSECUTION\20's\204078-US\204078 AM 1.4.06.DOC